IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2980 of 2002

with

SPECIAL CIVIL APPLICATION No 10128 of 2002

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION LTD.

Versus

DEVENDRASINH M. ZALA

Appearance:

1. Special Civil Application No. 2980 of 2002

MR UI VYAS for Petitioner No. 1

MR DJ BHATT for Respondent No. 1

2. Special Civil Application No. 10128 of 2002

MR DJ BHATT for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 13/07/2004

ORAL JUDGEMENT

1. Both the above petitions are directed against the judgement and award dated 8.2.2001 passed by the Labour Court, Kalol in Reference (LCK) No.177 of 1997, whereby the Labour Court directed the Gujarat State Road Transport Corporation (hereinafter referred to as the Corporation) to reinstate the workman on his original post with continuity of service along with 50% backwages and imposed penalty of stoppage of two increments with future effect.

2. The Corporation has employed Devendrasinh M. Zala (hereinafter referred to as the workman) on the post of Driver. The workman remained absent from duty without prior permission of the higher authority. A departmental inquiry was held against the workman and ultimately the the services of the workman were terminated by order dated 13.8.1996. The First Appeal filed against the said order has also been dismissed by the Appellate Board of the Corporation.

3. The workman raised a dispute which was ultimately registered as Reference (LCK) No.177/97 before the Labour Court, Kalol. After hearing the parties, the Labour Court, by judgement and award dated 8.2.2002 set aside the order of termination and directed the Corporation to reinstate the workman on his original post along with 50% backwages. However, the Labour Court has also imposed a penalty of stoppage of two increments with future effect.

4. Against the aforesaid jdugement and award of the Labour Court dated 8.2.2002 the Corporation has filed above Special Civil Application No.2980/2002. The workman has also filed Special Civil Application No.10128/2002 praying to set aside the penalty of stoppage of two increments with future effect and to grant full backwages.

5. Heard the learned counsel for the respective parties. Mr. Vyas, learned counsel for the Corporation submitted that looking to the conduct of the workman who as working as driver, the Labour Court was not justified in directing reinstatement of the workman. He submitted that the past record of the workman is not satisfactory. The default card produced on record shows that there are in all five defaults committed by the workman. He further submitted that even though minor penalties were

imposed upon the workman on previous occasions, the workman has not improved in his performance. He submitted that because of the act of the workman the Corporation was put to great inconvenience and loss and therefore, the judgement and award of the Labour Court was not just and proper. Learned counsel for the Corporation has relied upon a decision of this Court in the case of Gujarat State Road Transport Corporation Vs. Chimanlal R. Vaghri, reported in 2002(3) GLH 29 wherein it is held that by substituting the penalty of dismissal with that of stoppage of 3 increments for three months with future effect the Labour Court has exceeded its jurisdiction.

6. Mr. Bhatt for the workman submitted that there are no serious charges against the workman. According to him merely because a person has remained absent, punishment of dismissal is uncalled for. He, therefore, submitted that the judgement and award passed by the Labour Court is just and proper and requires no interference.

7. I have carefully perused the relevant documents on record of the case. Looking to the facts of the case it is clear that the charge was proved against the workman that he remained absent from duty without prior permission. The default card also shows that in past also the workman has committed defaults for which penalties were imposed upon him. Looking to the present case of remaining absent for duty, I am of the opinion that dismissal from service is too harsh and therefore the order of reinstatement and imposition of penalty of stoppage of two increments with future effect does not require any interference, especially when the Labour Court has exercised jurisdiction under section 11-A of the Act. However, I am also of the opinion that when the workman has remained absent from duty without prior permission of the authority, the workman is not entitled for any backwages and the Labour Court has committed an error in granting 50% backwages.

8. In the result, Special Civil Application No.2980/2002 is partly allowed. The order granting 50% backwages to the workman is set aside. The judgement and award of the Labour Court is modified to the aforesaid extent. The workman will be reinstated on service with continuity of service as directed by the Labour Court. It is clarified that the penalty of stoppage of two increments with future effect shall stand. Rule is made absolute accordingly with no order as to costs. Special

Civil Application No.10128/2002 filed by the workman is hereby rejected. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

ar